IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 468 OF 2004

Maharashtra State Co-Operative Marketing Federation Limited ..Petitioner

Vs.

Pars Ram Brothers (Aust) Pty & Anr. ..Respondents

Mr. Munshi with Ms. Rajani Iyer i/b Little and Co. for petitioner.

Mr. Gautam Ankhad i/b M/s. Ashwin Ankhad & Associates for Respondent No.1.

Mr. P.G. Sawant, AGP for Respondent No.2.

CORAM : B. H. MARLAPALLE,J.

Date : February 17, 2006.

P.C.:

1. Heard the learned counsel for the respective parties.

2. The petitioner is a Society registered originally under the Bombay Co-Operative Societies Act, 1925 and subsequently under the Maharashtra Co-Operative Societies Act 1960 and it is the Chief Agency of the State of Maharashtra for export of agricultural products produced in the State of Maharashtra and purchased by the State Government under its various schemes to give minimum assured price to the agriculturists. On 26/8/1993 a contract was signed between the petitioner and respondent for

purchase of 20,000 Tons of rain damaged jowar in the Kharif season of 1992-93. The said agreement contained a clause of arbitration which reads as under:-

> "In the event if any dispute regarding matters other than quality, the same shall be lodged expeditiously and may be settled amicably between the Sellers and the Buyers, failing which it would be referred to Secretary, to Government of Maharashtra, Food & Civil Supplies Department."

3. The petitioner-society invoked the said clause and referred the dispute between the parties to the Secretary, Food and Civil Supplies Department, Government of Maharashtra on 2/2/1998. For some reasons or the other the present respondent no.1 did not participate in the arbitral proceedings and, therefore, the Arbitrator passed an ex parte award on 3/3/1999. Consequently, the said award came to be challenged before this court in Arbitration Petition No.444 of 1999 and by the order dated 16/2/2000 this court was pleased to set aside the award dated 3/3/1999 and the arbitral proceedings were remanded

for fresh decision within a period of six months from the completion of the pleadings and by leaving all rights and contentions of the parties open. In the said order dated 16/2/2000 this court also stated, "matter be referred to arbitration of Secretary-Food and Civil Supplies as the 2nd Respondent has retired".

4. For the reasons attributable to the petitioner-society, the arbitral proceedings could not be completed within the time frame set out by this court in its order dated 16/2/2000 and, therefore, a Notice of Motion was taken out for extension, which was not entertained. This made the petitioner-society to file Arbitration Petition No.519 of 2003 again praying for extension of time as regard to the completion of the arbitral proceedings remanded by this court in Arbitration Petition No.444 of 1999. However, by the order dated 24/2/2004 Arbitration Petition No.519 of 2003 came to be dismissed by the following observations:-

> "It is very clear from the above that the petitioners have been absolutely callous and negligent in pursuing the arbitral proceedings. In fact in the petition there is no proper explanation for the gross delay, and this is not a case wherein this Court can

grant any further extension for disposal of the said arbitral proceedings. The petitioner is totally devoid of any merits, hence the same stands dismissed."

5. Under these circumstances, the present Arbitration Petition came to be moved but simultaneously under two different Sections i.e. Sections 15 and 11 of the Arbitration and Conciliation Act, 1996. It came to be placed before the Bench which did not have the powers delegated under Section 11 of the Act and, therefore, by order dated 10/1/2005 this court held that the present petition could not be treated to be an application under Section 14 of the Act and it could not be at the same time entertained as an application under Section 15(2) of the Act and, therefore, the relief prayed in terms of prayer clause (b) could not be granted. So far as the relief prayed for in prayer clause (c) is concerned, i.e. to fill up the vacancy of Arbitrator by passing appropriate orders under Section 11 of the Act, this court directed the application to be placed as an application under Section 11 of the Act and that is how this application has come before me.

6. The learned counsel for the respondent no.1 referred to the affidavit in reply filed and opposed

the application. It has been submitted that pursuant to the order passed by this court on 16/2/2000 the time span was set out for completing the arbitral proceedings and this time frame could not be maintained solely because of the callous and negligent attitude of the petitioner-society. It was further submitted that entertaining this application would amount to reviewing the order passed on 24/2/2004 by this court in Arbitration Petition No.519 of 2003. The learned counsel further referred to the scheme of arbitration under Section 11 of the Act and submitted that this application does not comply with the requirements set out in Clause 2 of the said scheme.

7. There is no dispute that on disposal of Arbitration Petition No.444 of 1999, the arbitral proceedings had commenced before the Secretary, Food and Civil Supplies Department, Government of Maharashtra and the petitioner appeared before the Arbitrator and filed rejoinder on 27/7/2000. Though the period of six months set out by this court expired on 27/1/2001 arbitration meetings were held on 13/2/2001, 3/3/2001 and 17/3/2001 before Mr. Dalvi who was occupying the post of Secretary. Mr. Dalvi retired on 31/3/2001 and his successor issued a letter dated 25/10/2002 reconveying the arbitration

proceedings and accordingly the petitioner and respondent no.1 appeared before him on 12/11/2002. Notice of Motion No.2334 of 2003 was taken out in Arbitration Petition No.444 of 1999 and it came to be disposed as withdrawn on 26/8/2003 with liberty to file a fresh petition and that is how Arbitration Petition No.519 of 2003 came to be moved before this court which was dismissed on 24/2/2004 as noted hereinabove.

8. The Arbitration Petition No.519 of 2003 was not filed either under Section 34 or Section 37 of the Act and, in fact, it could not have been entertained under the Act though it was dismissed attributing negligence and callousness on the part of the petitioner-society. The fact remains that arbitration proceedings had commenced between the parties and the ex parte award passed by the Arbitrator on 3/3/1999 came to be set aside by this court. The arbitration proceedings were remanded for fresh decision within six months. For some reasons or the other this decision has not been concluded even as at present and, therefore, it cannot be stated at this stage that arbitral proceedings between the parties initiated on 2/2/1998 have come to an end. The order dated 24/2/2004 dismissing Arbitration Petition No.519 of

2003 does not come in the way of issuing directions to complete the proceedings.

9. In the case of S.B.P. and Co. vs. Patel Engineering Ltd. and Anr. reported in **2005 (9) SCALE 1**, while recording the conclusions in the majority view in para 46 (vi), it has been stated as under :-

> "Once the matter reaches the arbitral tribunal or the sole arbitrator, the High Court would not interfere with orders passed by the arbitrator or the arbitral tribunal during the course of the arbitration proceedings and the parties could approach the court only in terms of Section 37 of the Act or in terms of Section 34 of the Act."

10. On the retirement of Mr. Dalvi, the new Secretary issued the notice on 25/10/2002 and it appears that there was some unwarranted confusion created regarding a particular officer to continue with the arbitral proceedings and this resulted in the arbitral proceedings remaining inconclusive or incomplete. Clause 10.1, as quoted hereinabove, does

not name the arbitrator by an individual officer but it only specifies the post i.e. the Secretary, Food and Civil Supplies Department, Government of Maharashtra who should be the sole Arbitrator. On the retirement of Mr. Dalvi, it would, therefore, necessary for the petitioner-incumbent to proceed with the arbitral proceedings and once the officer had retired he could not be associated or continued as the sole Arbitrator. It ought to be the officer who occupies the post of Secretary, Food and Civil Supplies Department, Government of Maharashtra.

11. Under the circumstances it is not necessary to entertain this application for appointment of the sole Arbitrator afresh and the application is disposed off with a direction to the Secretary, Food and Civil Supplies Department, Government of Maharashtra to continue with the arbitral proceedings pending and complete the same as expeditiously as possible. The learned AGP states that the functions of Secretary are now being performed by the Principal Secretary and, therefore, it is directed that the pending arbitral proceedings shall be continued and completed by the Principal Secretary, Food and Civil Supplies Department, Government of Maharashtra. The parties to appear before the Principal Secretary, Food and Civil

Supplies Department, Government of Maharashtra within a period of three weeks from today.

12. A copy of this order be forwarded to the Principal Secretary, Food and Civil Supplies Department, Government of Maharashtra forthwith.

(B.H. Marlapalle, J.)